

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE CORKER d/b/a RANCHO ALOHA;
COLEHOUR BONDERA and MELANIE
BONDERA, husband and wife d/b/a
KANALANI OHANA FARM; and ROBERT
SMITH and CECELIA SMITH, husband and
wife d/b/a SMITHFARMS, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a
Washington corporation; AMAZON.COM,
INC., a Delaware corporation; HAWAIIAN
ISLES KONA COFFEE, LTD., LLC, a
Hawaiian limited liability company; COST
PLUS/WORLD MARKET, a subsidiary of
BED BATH & BEYOND, a New York
corporation; BCC ASSETS, LLC d/b/a
BOYER'S COFFEE COMPANY, INC., a
Colorado corporation; L&K COFFEE CO. LLC,
a Michigan limited liability company;
MULVADI CORPORATION, a Hawaii
corporation; COPPER MOON COFFEE, LLC,
an Indiana limited liability company; GOLD
COFFEE ROASTERS, INC., a Delaware
corporation; CAMERON'S COFFEE AND
DISTRIBUTION COMPANY, a Minnesota
corporation; PACIFIC COFFEE, INC., a Hawaii
corporation; THE KROGER CO., an Ohio
corporation; WALMART INC., a Delaware
corporation; BED BATH & BEYOND INC., a
New York corporation; ALBERTSONS
COMPANIES INC., a Delaware corporation;
SAFEWAY INC., a Delaware corporation;
MNS LTD., a Hawaii corporation; THE TJX
COMPANIES d/b/a T.J. MAXX, a Delaware
corporation; MARSHALLS OF MA, INC. d/b/a
MARSHALLS, a Massachusetts corporation;
SPROUTS FARMERS MARKET, INC., a
Delaware corporation,

Defendants.

No. 2:19-cv-00290-RSL

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

This stipulation is not an agreement that any particular document or category of documents is discoverable, but is intended to protect only those documents that are produced and which are entitled to protection.

2. “CONFIDENTIAL” AND “HIGHLY CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (1) sensitive and/or non-public contractual terms with customers, vendors, advertising platforms, and other parties; (2) sensitive pricing, financial, and/or profit information; (3) sensitive information regarding suppliers and supplier lists; (4) sensitive information regarding customers, customer lists, customer usage, and customer technical requirements; (5) sensitive product development information and information relating to new products; (6) sensitive development processes, designs, drawings, engineering, and hardware and software configuration information; (7) sensitive marketing plans, business plans, forecasts, and business strategies; (8) sensitive communications and information relating to products and services, including, but not limited to, advertising data, which in the hands of competitors would be valuable; (9) customer feedback regarding products that have not been publicly disclosed; (10) protected personal information (including contact information) and other information subject to privacy laws; (11) sensitive internal financial reporting; and (12) other

1 non-public business information that is treated confidentially by the producing party in the
2 ordinary course of business, the disclosure of which may cause the producing party to be
3 commercially disadvantaged or prejudiced.

4 “Highly Confidential” material means any Confidential material which the producing
5 party reasonably believes to be so competitively sensitive that it is entitled to additional
6 protection via an “Attorneys’ Eyes Only” or “Outside Counsel Only” designation.

7 Confidential and/or Highly Confidential material may further be designated as for
8 “Plaintiffs’ Outside Counsel Only” if it is information that a defendant deems inappropriate to be
9 shared with another defendant for competitive or proprietary business reasons. This level of
10 protection is necessary because the Parties acknowledge that many of the Defendants are
11 competitors with one another and the disclosure of this type of information would be highly
12 prejudicial to their businesses, and is correspondingly unnecessary for the others to see. These
13 designations bear the same protections as the Highly Confidential designations, with the
14 additional protection that the document may not be disclosed to anyone other than Plaintiffs’
15 outside counsel.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material; (2)
19 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
20 conversations, or presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information that is in
22 the public domain or becomes part of the public domain through trial or otherwise.

23 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

24 4.1. Basic Principles. A receiving party may use confidential material that is disclosed
25 or produced by another party or by a non-party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Confidential material may be disclosed only to

1 the categories of persons and under the conditions described in this agreement. Confidential
2 material must be stored and maintained by a receiving party at a location and in a secure manner
3 that ensures that access is limited to the persons authorized under this agreement.

4 4.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the designating party, a receiving party may
6 disclose any confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless:

11 1. the producing party specifies, by appropriate designation, that a
12 particular document or material produced is for “Attorney’s Eyes
13 Only”, in which case the disclosure may be to in house counsel
14 only, and not to other officers, directors, or employees (for the
15 avoidance of doubt, this provision does not prevent disclosure to
16 outside counsel under §4.2(a)); or

17 2. The producing party specifies, by appropriate designation, that a
18 particular document or material produced is for “Outside Counsel
19 Only,” in which case no disclosure to the receiving party is
20 permitted;

21 (c) experts and consultants to whom disclosure is reasonably necessary for
22 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
23 A);

24 (d) the court, court personnel, and court reporters and their staff;

25 (e) copy or imaging services retained by counsel to assist in the duplication of
26 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses from the designating party in the action
4 to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
6 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that
7 reveal confidential material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) insurers, including their claims representatives, for a party to whom it is
12 reasonably necessary to disclose the information for this litigation and who have signed the
13 ‘Acknowledgment and Agreement to Be Bound’ (Exhibit A).

14 4.3. Filing Confidential Material. Before filing confidential material or discussing or
15 referencing such material in court filings, the filing party shall confer with the designating party
16 to determine whether the designating party will remove the confidential designation, whether the
17 document can be redacted, or whether a motion to seal or stipulation and proposed order is
18 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
19 standards that will be applied when a party seeks permission from the court to file material under
20 seal.

21 4.4. Pursuant to Section 6.3 below, where there is a challenge to the confidentiality
22 designation of a document, all parties shall continue to maintain the material in question pursuant
23 to the producing party’s confidentiality designation until the Court rules on the challenge. If the
24 parties are unable to resolve the dispute, a party may file and serve a motion to concerning the
25 confidentiality designation, under LCR 7, within ten (10) days of the meet and confer.
26

1 4.5. In the event that the protected or confidential status of a document is challenged
2 shortly before a motion, response or reply is to be filed, so that there may not be adequate time to
3 resolve the issue, the Parties agree that the challenged documents will be submitted to the Court
4 under seal, in accordance with Local Civil Rule 5(g), until such time as the Court rules on the
5 confidentiality designation. Depending on the outcome of the designation challenge, the
6 document may then be subject to filing under seal upon the Court's permission or direction.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each party
9 or non-party that designates information or items for protection under this agreement must take
10 care to limit any such designation to specific material that qualifies under the appropriate
11 standards. The designating party must designate for protection only those parts of material,
12 documents, items, or oral or written communications that qualify, so that other portions of the
13 material, documents, items, or communications for which protection is not warranted are not
14 swept unjustifiably within the ambit of this agreement.

15 Mass or indiscriminate designations are prohibited. Designations that are shown to be
16 clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
17 encumber or delay the case development process or to impose unnecessary expenses and burdens
18 on other parties) expose the designating party to sanctions.

19 If it comes to a designating party's attention that information or items that it designated
20 for protection do not qualify for protection, the designating party must promptly notify all other
21 parties that it is withdrawing the mistaken designation.

22 5.2. Manner and Timing of Designations. Except as otherwise provided in this
23 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
24 ordered, disclosure or discovery material that qualifies for protection under this agreement must
25 be clearly so designated before or when the material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic documents
 2 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 3 proceedings), the designating party must affix the words “CONFIDENTIAL,” “HIGHLY
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE
 5 COUNSEL ONLY,” or “HIGHLY CONFIDENTIAL – PLAINTIFFS’ OUTSIDE COUNSEL
 6 ONLY” to each page that contains confidential material. When such procedure is not reasonably
 7 feasible (e.g., for electronic documents produced as “native” files), the designating party may
 8 include confidentiality information in metadata accompanying the production, or in another
 9 method agreed upon by the parties.

10 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 11 and any participating non-parties must identify on the record, during the deposition or other
 12 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 13 testimony after reviewing the transcript. Any party or non-party may, within thirty days after
 14 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 15 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
 16 confidential information at trial, the issue should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent place
 18 on the exterior of the container or containers in which the information or item is stored the word
 19 “CONFIDENTIAL,” and as appropriate, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 20 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY,” or “HIGHLY
 21 CONFIDENTIAL – PLAINTIFFS’ OUTSIDE COUNSEL ONLY.” If only a portion or portions
 22 of the information or item warrant protection, the producing party, to the extent practicable, shall
 23 identify the protected portion(s).

24 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 25 designate qualified information or items does not, standing alone, waive the designating party’s
 26 right to secure protection under this agreement for such material. Upon timely correction of a

1 designation, the receiving party must make reasonable efforts to ensure that the material is
2 treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1. Timing of Challenges. Any party may challenge a designation of confidentiality at
5 any time. Unless a prompt challenge to a designating party's confidentiality designation is
6 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
7 significant disruption or delay of the litigation, a party does not waive its right to challenge a
8 confidentiality designation by electing not to mount a challenge promptly after the original
9 designation is disclosed.

10 6.2. Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion or in
13 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
14 conference with other affected parties in an effort to resolve the dispute without court action. The
15 certification must list the date, manner, and participants to the conference. A good faith effort to
16 confer requires a face-to-face meeting or a telephone conference.

17 6.3. Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, a party may file and serve a motion regarding confidentiality under Local Civil
19 Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). If the receiving party has
20 provided written notice that it intends to file confidential or protected documents in support of a
21 motion, a meet and confer is subsequently held, the parties cannot resolve the challenge to
22 confidentiality, and the designating party then fails to bring a motion to retain confidentiality
23 within 10 days of the meet and confer, it shall be considered a waiver of the designation of
24 confidentiality, unless good cause is shown. The burden of persuasion in any such motion shall
25 be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*,
26 to harass or impose unnecessary expenses and burdens on other parties) may expose the

1 challenging party to sanctions. All parties shall continue to maintain the material in question as
2 confidential until the court rules on the challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
7 party must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
21 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
22 Agreement to Be Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties
4 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts
8 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
9 destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
15 designating party agrees otherwise in writing or a court orders otherwise.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 Dated: September __, 2019

Dated: September __, 2019

2 Respectfully submitted,

Respectfully submitted,

3 DAVIS WRIGHT TREMAINE LLP
4 *Attorneys for Defendants Cameron's*
5 *Coffee and Distribution Company; Gold*
6 *Coffee Roasters, Inc.; The Kroger Co.;*
7 *Albertson's Companies Inc.; Safeway Inc.;*
8 *Walmart, Inc.; The TJX Companies d/b/a*
9 *T.J. Maxx; Marshalls of MA, Inc. d/b/a*
10 *Marshalls; Amazon.Com, Inc.; Copper*
11 *Moon Coffee LLC; and Bed Bath & Beyond*
12 *Inc.*

KARR TUTTLE CAMPBELL

13 By s/ Jaime Drozd Allen
14 Jaime Drozd Allen, WSBA #35742
15 Stephen M. Rummage, WSBA #11168
16 Ambika Doran, WSBA #38237
17 Jacob M. Harper (*pro hac vice*)
18 Benjamin J. Robbins, WSBA #53376
19 920 Fifth Avenue, Suite 3300
20 Seattle, WA 98104-1610
21 Telephone: (206) 757-8039
22 Fax: (206) 757-7039
23 E-mail: jaimeallen@dwt.com
24 E-mail: steverummage@dwt.com
25 E-mail: ambikadoran@dwt.com
26 E-mail: jharper@dwt.com
E-mail: benrobbins@dwt.com

By: s/ Paul Brown (per email authorization)
Paul Richard Brown, WSBA
#19357
Nathan T. Paine, WSBA #34487
701 Fifth Avenue, Suite 3300
Seattle, Washington 98104
206.223.1313
pbrown@karrtuttle.com

LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP

By: s/ Daniel Seltz (per email authorization)
Jason L. Lichtman
Daniel E. Seltz
250 Hudson Street, 8th Floor
New York, NY 10013
212.355.9500
jlichtman@lchb.com

16 ARNOLD & PORTER KAYE SCHOLER
17 LLP
18 *Attorneys for Defendant Bed Bath &*
19 *Beyond Inc. and Copper Moon Coffee LLC*

Attorneys for Plaintiffs and the Proposed Class

20 Trenton H. Norris (*pro hac vice*)
21 Trent.Norris@arnoldporter.com
22 Tommy Huynh (*pro hac vice*)
23 Tommy.Huynh@arnoldporter.com
24 Three Embarcadero Center, 10th Floor
25 San Francisco, CA 94111
26 Telephone: (415) 471-3100
Fax: (415) 471-3400

1 HILLIS CLARK MARTIN & PETERSON P.S.
2 *Attorneys for Defendant Cost Plus, Inc.*

3 By s/ Eric D. Lansverk (per email authorization)
4 Eric D. Lansverk, WSBA #17218
5 999 Third Avenue, Suite 4600
6 Seattle, WA 98104
7 Telephone: (206) 623-1745
8 Fax: (206) 623-7789
9 E-mail: eric.lansverk@hcmp.com

10 BRYAN CAVE LEIGHTON PAISNER LLP
11 *Attorneys for Defendant Cost Plus, Inc.*

12 By s/ Marcy J. Bergman (per email authorization)
13 Marcy J. Bergman (CA Bar No. 75826,
14 pro hac vice application approved)
15 Merrit M. Jones (CA Bar No. 209033,
16 pro hac vice application approved)
17 Three Embarcadero Center, 7th Floor
18 San Francisco, California 94111-4070
19 Telephone: (415) 675-3400
20 Fax: (415) 675-3635
21 E-mail: Marcy.Bergman@bclplaw.com
22 E-mail: Merrit.Jones@bclplaw.com

23 SAVITT BRUCE & WILLEY LLP
24 *Attorneys for Defendants Costco Wholesale Corporation*
25 *and L&K Coffee Co. LLC*

26 By s/ Duffy Graham (per email authorization)
27 Stephen C. Willey, WSBA #24499
28 Duffy Graham, WSBA #33103
29 Brandi B. Balanda, WSBA #48836
30 1425 Fourth Avenue Suite 800
31 Seattle, Washington 98101-2272
32 Telephone: (206) 749-0500
33 Fax: (206) 749-0600
34 E-mail: swilley@sbwLLP.com
35 E-mail: dgraham@sbwLLP.com
36 E-mail: bbalanda@sbwLLP.com

37 //

38 //

39 //

CADES SCHUTTE LLP

Attorneys for Defendant MNS Ltd.

By s/ Kelly G. LaPorte (per email authorization)

Kelly G. LaPorte, *pro hac vice*

Nathaniel Dang, *pro hac vice*

1000 Bishop Street, 12th Floor

Honolulu, HI 96813

Telephone: (808) 521-9200

Fax: (808) 521-9210

E-mail: klaporte@cades.com

E-mail: ndang@cades.com

BULLIVANT HOUSER BAILEY, PC

Attorneys for Defendant MNS Ltd.

By s/ Daniel R. Bentson (per email authorization)

Daniel R. Bentson, WSBA #36825

Owen R. Mooney, WSBA #45779

1700 Seventh Avenue, Suite 1810

Seattle, WA 98101

Telephone: (206) 292-8930

Fax: (206) 386-5130

E-mail: dan.bentson@bullivant.com

E-mail: owen.mooney@bullivant.com

DORSEY & WHITNEY LLP

Attorneys for Defendant Sprouts Farmers Market, Inc.

By s/ J. Michael Keyes (per email authorization)

J. Michael Keyes, WSBA #29215

Erin C. Kolter, WSBA #53365

Brian J. Janura, WSBA #50213

Columbia Center

701 Fifth Avenue, Suite 6100

Seattle, WA 98104

Telephone: (206) 903-8800

E-mail: keyes.mike@dorsey.com

E-mail: kolter.erin@dorsey.com

E-mail: janura.brian@dorsey.com

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LANE POWELL PC

Attorneys for Defendant Hawaiian Isles Kona Coffee Company, Ltd.

By s/ Erin M. Wilson (per email authorization)

Erin M. Wilson, WSBA No. 42454

Tiffany Scott Connors, WSBA No. 41740

Jessica Walder, WSBA No. 47676

1420 Fifth Avenue, Suite 4200

P.O. Box 91302

Seattle, WA 98111-9402

Telephone: (206) 223-7000

Fax: (206) 223-7107

E-mail: wilsonem@lanepowell.com

E-mail: connorst@lanepowell.com

E-mail: walderj@lanepowell.com

BUCHALTER

A Professional Corporation

Attorneys for Defendant Mulvadi Corporation

By s/ Bradley P. Thoreson (per email authorization)

Bradley P. Thoreson, WSBA #18190

1420 Fifth Ave., Ste. 3100

Seattle, WA 98101-1337

Telephone: (206) 319-7052

E-mail: bthoreson@buchalter.com

WILSON SMITH COCHRAN DICKERSON

Attorneys for Defendant Pacific Coffee, Inc.

By s/ Alfred E. Donohue (per email authorization)

Alfred E. Donohue, WSBA #32774

Maria E. Sotirhos, WSBA #21726

901 Fifth Avenue, Suite 1700

Seattle, WA 98164

Telephone: (206) 623-4100

Fax: (206) 623-9273

E-mail: donohue@wscd.com

E-mail: sotirhos@wscd.com

LEE SMART, P.S., INC.

Attorneys for Defendant BCC

By s/ Marc Rosenberg (per email authorization)

Marc Rosenberg, WSBA # 31034

1800 One Convention Place

701 Pike St.

Seattle, WA 98101-3929

Telephone: (206) 624-7990

Fax: (206) 624-5944

E-mail: mr@leesmart.com

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

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8 DATED: September 18, 2019

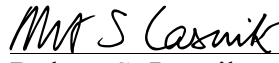
9
10 
11 Robert S. Lasnik
12 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on
_____ in the case of *Corker, et al. v. Costco Wholesale Corp., et al.* . I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____